



ENTERED
02/22/2016

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE)
RICARDO FORNESA, JR. and) CASE NO. 12-37238-H3-13
CYNTHIA FORNESA,)
Debtors)

MEMORANDUM OPINION

The court has held an evidentiary hearing on the "Motion for Relief from the Stay [And Co-Debtor Stay, If Applicable] Regarding Exempt Property" (Docket No. 105) filed by Movant, U.S. Bank Trust, N.A., as Trustee for LSF8 Master Participation Trust, by Caliber Home Loans, Inc., as its attorney in fact. After consideration of the Responses filed thereto (Docket Nos. 106 and 107) by Ricardo and Cynthia Fornesa, Debtors, the pleadings, docket sheet, evidence, and testimony, the following are the Findings of Fact and Conclusions of Law of the court. A separate Judgment will be entered granting the motion. To the extent any of the Findings of Fact are considered Conclusions of Law, they are adopted as such. To the extent any of the Conclusions of Law are considered Findings of Fact, they are adopted as such.

Findings of Fact

Ricardo and Cynthia Fornesa filed a voluntary petition under Chapter 13 of the Bankruptcy Code on September 30, 2012 and a plan was confirmed on April 25, 2013.

In the instant motion, Movant seeks relief from stay based upon the Debtors' failure to make payments. Debtors executed a Deed of Trust Note and Lien on the real property located at 2123 Squire Dobbins, Sugarland, Texas 77478. Movant is the owner and holder of the Deed of Trust Note and Lien, through an assignment of mortgage. Movant's Exhibit Nos. 1 - 3, and 7. Debtors have not made a payment on the note since October 1, 2012. Movant's Exhibit Nos. 4 and 7. Debtor, Ricardo Fornesa, testified that Debtors have not lived in the property since December 2013 because it was not habitable. Debtors have no equity in the property. Movant's Exhibit Nos. 6 and 7.

The court takes judicial notice of Adversary Proceeding 16-3029 which was filed by Debtors on February 16, 2016. In the adversary proceeding, Debtors seek actual and punitive damages against HSBC, Beneficial, Movant and "DOES 1-100" based upon violations of the U.S. Fair Housing Act by the defendants' engaging in predatory mortgage lending. Debtors have made no offer of adequate protection, and presented no evidence to demonstrate that the terms of Debtors' plan are sufficient to provide adequate protection of Movant's lien.

Conclusions of Law

Section 362(d) of the Bankruptcy Code provides in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

11 U.S.C. §§ 362(d)(1), 362(d)(2).

Section 362(g) of the Bankruptcy Code provides:

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

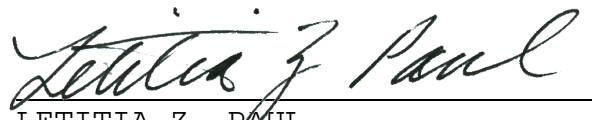
(2) the party opposing such relief has the burden of proof on all other issues.

11 U.S.C. § 362(g).

Cause is not defined in the Bankruptcy Code, and must be determined on a case by case basis based on an examination of the totality of circumstances. *In re Reitnauer*, 152 F.3d 341, 343 n. 4 (5th Cir. 1998); *In re Mendoza*, 111 F.3d 1264 (5th Cir. 1997). The court concludes that the stay should be lifted pursuant to Section 362(d)(1) of the Bankruptcy Code.

Based on the foregoing, a separate Judgment will be entered granting the "Motion for Relief from the Stay [And Co-Debtor Stay, If Applicable] Regarding Exempt Property" (Docket No. 105) filed by Movant.

Signed at Houston, Texas on February 22, 2016.


LETITIA Z. PAUL
UNITED STATES BANKRUPTCY JUDGE